108TH CONGRESS 1ST SESSION

S. 135

To amend the Internal Revenue Code of 1986 to expand the 10 percent tax bracket, to freeze the rate of the top tax brackets, to provide an immediate \$4,000,000 estate tax exemption and complete estate tax exclusion for family-owned businesses while eliminating the repeal of the estate tax, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 9, 2003

Mr. Dayton introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to expand the 10 percent tax bracket, to freeze the rate of the top tax brackets, to provide an immediate \$4,000,000 estate tax exemption and complete estate tax exclusion for family-owned businesses while eliminating the repeal of the estate tax, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Dayton Fair Tax Cut
- 5 Act".

1 SEC. 2. TABLE OF CONTENTS.

- 2 (a) Table of Contents of
- 3 this Act is as follows:
 - Sec. 1. Short title.
 - Sec. 2. Table of contents.

TITLE I—10 PERCENT BRACKET

Sec. 101. Expansion of 10 percent bracket.

TITLE II—TAX RATES

Sec. 201. Repeal of income tax rate reductions for highest income taxpayers.

TITLE III—ESTATE TAX

Sec. 301. Estate tax with full tax deduction for family-owned business interests.

TITLE IV—TAX SHELTER TRANSACTIONS

Sec. 401. Findings and purpose.

Subtitle A—Clarification of Economic Substance Doctrine

Sec. 411. Clarification of economic substance doctrine.

Subtitle B—Penalties

- Sec. 421. Increase in penalty on underpayments resulting from failure to satisfy certain common law rules.
- Sec. 422. Penalty on promoters of tax avoidance strategies which have no economic substance, etc.
- Sec. 423. Modifications of penalties for aiding and abetting understatement of tax liability involving tax shelters.
- Sec. 424. Failure to maintain lists.
- Sec. 425. Penalty for failing to disclose reportable transaction.
- Sec. 426. Registration of certain tax shelters without corporate participants.
- Sec. 427. Effective dates.

Subtitle C—Limitation on Importation or Transfer of Built-in Losses

- Sec. 431. Limitation on importation of built-in losses.
- Sec. 432. Disallowance of partnership loss transfers.

TITLE V—EXPATRIATE CORPORATIONS

Sec. 501. Foreign corporations created through inversion transactions taxed as domestic corporations.

TITLE VI—CHILD TAX CREDIT

Sec. 601. Acceleration of child tax credit.

TITLE VII—MARRIAGE PENALTY RELIEF

Sec. 701. Acceleration of marriage penalty relief provisions.

TITLE VIII—ALTERNATIVE MINIMUM TAX

Sec. 801. Alternative minimum tax relief.

1 TITLE I—10 PERCENT BRACKET

2	SEC. 101. EXPANSION OF 10 PERCENT BRACKET.
3	(a) In General.—Subparagraph (B) of section
4	1(i)(1) of the Internal Revenue Code of 1986 (relating to
5	initial bracket amount) is amended by—
6	(1) striking "\$14,000 (\$12,000 in the case of
7	taxable years beginning before January 1, 2008)" in
8	clause (i) and inserting "\$24,000", and
9	(2) striking "\$10,000" in clause (ii) and insert-
10	ing "\$15,000".
11	(b) Effective Date.—The amendments made by
12	this section shall apply to taxable years beginning after
13	December 31, 2002.
14	TITLE II—TAX RATES
15	SEC. 201. REPEAL OF INCOME TAX RATE REDUCTIONS FOR
16	HIGHEST INCOME TAXPAYERS.
17	(a) In General.—The table contained in section
18	1(i)(2) of the Internal Revenue Code of 1986 (relating to
19	reductions in rates after June 30, 2001) is amended—
20	(1) in the second column, by striking "29.0%"
21	and inserting "30.0%",
22	(2) in the second column, by striking "28.9%"

1	(3) in the third column, by striking "34.0%"
2	and inserting "35.0%",
3	(4) in the third column, by striking "33.0%"
4	and inserting "35.0%",
5	(5) in the last column, by striking "37.6%" and
6	inserting "38.6%", and
7	(6) in the last column, by striking "35.0%" and
8	inserting "38.6%".
9	(b) Effective Date.—The amendments made by
10	this section shall apply to taxable years beginning after
11	December 31, 2002.
12	TITLE III—ESTATE TAX
13	SEC. 301. ESTATE TAX WITH FULL TAX DEDUCTION FOR
13 14	SEC. 301. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.
14	FAMILY-OWNED BUSINESS INTERESTS.
14 15	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.—
141516	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.— (1) In general.—Subtitle A of title V, sec-
14 15 16 17	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.— (1) In General.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E
14 15 16 17 18	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.— (1) In general.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief
14 15 16 17 18	FAMILY-OWNED BUSINESS INTERESTS. (a) ELIMINATION OF ESTATE TAX REPEAL.— (1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.
14 15 16 17 18 19 20	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.— (1) In general.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed. (2) Conforming amendments.—
14 15 16 17 18 19 20 21	FAMILY-OWNED BUSINESS INTERESTS. (a) Elimination of Estate Tax Repeal.— (1) In General.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed. (2) Conforming amendments.— (A) The table contained in section

1	(B) Section 901 of the Economic Growth
2	and Tax Relief Reconciliation Act of 2001 is
3	amended—
4	(i) by striking "this Act" and all that
5	follows through "2010." in subsection (a)
6	and inserting "this Act (other than title V)
7	shall not apply to taxable, plan, or limita-
8	tion years beginning after December 31,
9	2010.", and
10	(ii) by striking ", estates, gifts, and
11	transfers" in subsection (b).
12	(b) Increase in Exclusion Amount.—Subsection
13	(c) of section 2010 of the Internal Revenue Code of 1986
14	is amended by striking "were the applicable exclusion
15	amount" and all that follows and inserting "\$4,000,000.".
16	(c) Full Tax Deduction for Family-Owned
17	Business Interests.—
18	(1) In general.—Section 2057(a) of the In-
19	ternal Revenue Code of 1986 (relating to deduction
20	for family-owned business interests) is amended—
21	(A) by striking paragraphs (2) and (3),
22	and
23	(B) by striking "General Rule.—" and
24	all that follows through "For purposes" and in-

1	serting "Allowance of Deduction.—For
2	purposes".
3	(2) Permanent Deduction.—Section 2057 of
4	such Code is amended by striking subsection (j).
5	(d) Effective Date.—The amendments made by
6	this section shall apply to the estates of decedents dying,
7	and gifts made, after December 31, 2002.
8	TITLE IV—TAX SHELTER
9	TRANSACTIONS
10	SEC. 401. FINDINGS AND PURPOSE.
11	(a) FINDINGS.—The Congress hereby finds that:
12	(1) Many corporate tax shelter transactions are
13	complicated ways of accomplishing nothing aside
14	from claimed tax benefits, and the legal opinions
15	justifying those transactions take an inappropriately
16	narrow and restrictive view of well-developed court
17	doctrines under which—
18	(A) the taxation of a transaction is deter-
19	mined in accordance with its substance and not
20	merely its form,
21	(B) transactions which have no significant
22	effect on the taxpayer's economic or beneficial
23	interests except for tax benefits are treated as
24	sham transactions and disregarded.

- 1 (C) transactions involving multiple steps 2 are collapsed when those steps have no substan-3 tial economic meaning and are merely designed 4 to create tax benefits,
 - (D) transactions with no business purpose are not given effect, and
 - (E) in the absence of a specific congressional authorization, it is presumed that Congress did not intend a transaction to result in a negative tax where the taxpayer's economic position or rate of return is better after tax than before tax.
 - (2) Permitting aggressive and abusive tax shelters not only results in large revenue losses but also undermines voluntary compliance with the Internal Revenue Code of 1986.
- 17 (b) Purpose.—The purpose of this title is to elimi18 nate abusive tax shelters by denying tax attributes claimed
 19 to arise from transactions that do not meet a heightened
 20 economic substance requirement and by repealing the pro21 vision that permits legal opinions to be used to avoid pen22 alties on tax underpayments resulting from transactions
 23 without significant economic substance or business pur24 pose.

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Subtitle A—Clarification of 1 **Economic Substance Doctrine** 2 3 SEC. 411. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-4 TRINE. 5 (a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 (relating to definitions) is amended by 7 redesignating subsection (n) as subsection (o) and by in-8 serting after subsection (m) the following new subsection: 9 "(n) Clarification of Economic Substance 10 DOCTRINE; ETC.— 11 "(1) General rules.— "(A) IN GENERAL.—In applying the eco-12 13 nomic substance doctrine, the determination of 14 whether a transaction has economic substance 15 shall be made as provided in this paragraph. 16 "(B) Definition of economic sub-17 STANCE.—For purposes of subparagraph (A)— "(i) In general.—A transaction has 18 19 economic substance only if— "(I) the transaction changes in a 20 21 meaningful way (apart from Federal 22 income tax effects) the taxpayer's eco-23 nomic position, and 24 "(II) the taxpaver has a substan-25 tial nontax purpose for entering into

1	such transaction and the transaction
2	is a reasonable means of accom-
3	plishing such purpose.
4	"(ii) Special rule where tax-
5	PAYER RELIES ON PROFIT POTENTIAL.—A
6	transaction shall not be treated as having
7	economic substance by reason of having a
8	potential for profit unless—
9	"(I) the present value of the rea-
10	sonably expected pre-tax profit from
11	the transaction is substantial in rela-
12	tion to the present value of the ex-
13	pected net tax benefits that would be
14	allowed if the transaction were re-
15	spected, and
16	"(II) the reasonably expected
17	pre-tax profit from the transaction ex-
18	ceeds a risk-free rate of return.
19	"(C) Treatment of fees and foreign
20	TAXES.—Fees and other transaction expenses
21	and foreign taxes shall be taken into account as
22	expenses in determining pre-tax profit under
23	subparagraph (B)(ii).
24	"(2) Special rules for transactions with
25	TAX-INDIFFERENT PARTIES —

"(A) 1 SPECIAL RULES FOR FINANCING 2 TRANSACTIONS.—The form of a transaction 3 which is in substance the borrowing of money 4 or the acquisition of financial capital directly or 5 indirectly from a tax-indifferent party shall not 6 be respected if the present value of the deduc-7 tions to be claimed with respect to the trans-8 action are substantially in excess of the present 9 value of the anticipated economic returns of the 10 person lending the money or providing the financial capital. A public offering shall be treat-12 ed as a borrowing, or an acquisition of financial 13 capital, from a tax-indifferent party if it is rea-14 sonably expected that at least 50 percent of the 15 offering will be placed with tax-indifferent parties. 16 17

"(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

"(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

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1	"(ii) it results in a basis adjustment
2	or shifting of basis on account of over-
3	stating the income or gain of the tax-indif-
4	ferent party.
5	"(3) Definitions and special rules.—For
6	purposes of this subsection—
7	"(A) ECONOMIC SUBSTANCE DOCTRINE.—
8	The term 'economic substance doctrine' means
9	the common law doctrine under which tax bene-
10	fits under subtitle A with respect to a trans-
11	action are not allowable if the transaction does
12	not have economic substance or lacks a business
13	purpose.
14	"(B) TAX-INDIFFERENT PARTY.—The
15	term 'tax-indifferent party' means any person
16	or entity not subject to tax imposed by subtitle
17	A. A person shall be treated as a tax-indifferent
18	party with respect to a transaction if the items
19	taken into account with respect to the trans-
20	action have no substantial impact on such per-
21	son's liability under subtitle A.
22	"(C) Exception for Personal Trans-
23	ACTIONS OF INDIVIDUALS.—In the case of an
24	individual, this subsection shall apply only to
25	transactions entered into in connection with a

trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

"(4) OTHER COMMON LAW DOCTRINES NOT AF-FECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law referred to in section 6662(i)(2), and the requirements of this subsection shall be construed as being in addition to any such other rule of law.".

19 (b) Effective Date.—The amendments made by 20 this section shall apply to transactions after the date of 21 the enactment of this Act.

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1	Subtitle B—Penalties
2	SEC. 421. INCREASE IN PENALTY ON UNDERPAYMENTS RE-
3	SULTING FROM FAILURE TO SATISFY CER
4	TAIN COMMON LAW RULES.
5	(a) In General.—Section 6662 of the Internal Rev-
6	enue Code of 1986 (relating to imposition of accuracy-re-
7	lated penalty) is amended by adding at the end the fol-
8	lowing new subsection:
9	"(i) Increase in Penalty in Case of Failure To
10	SATISFY CERTAIN COMMON LAW RULES.—
11	"(1) IN GENERAL.—To the extent that an un-
12	derpayment is attributable to a disallowance de-
13	scribed in paragraph (2)—
14	"(A) subsection (a) shall be applied with
15	respect to such portion by substituting '40 per-
16	cent' for '20 percent', and
17	"(B) subsection (d)(2)(B) and section
18	6664(c) shall not apply.
19	"(2) DISALLOWANCES DESCRIBED.—A disallow-
20	ance is described in this subsection if such disallow-
21	ance is on account of—
22	"(A) a lack of economic substance (within
23	the meaning of section $7701(n)(1)$) for the
24	transaction giving rise to the claimed benefit or

1	the transaction was not respected under section
2	7701(n)(2),
3	"(B) a lack of business purpose for such
4	transaction or because the form of the trans-
5	action does not reflect its substance, or
6	"(C) a failure to meet the requirements of
7	any other similar rule of law.
8	"(3) Increase in penalty not to apply if
9	COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—
10	Paragraph (1)(A) shall not apply if the taxpayer dis-
11	closes to the Secretary (as such time and in such
12	manner as the Secretary shall prescribe) such infor-
13	mation as the Secretary shall prescribe with respect
14	to such transaction.".
15	(b) Modifications to Penalty on Substantial
16	UNDERSTATEMENT OF INCOME TAX.—
17	(1) Modification of threshold.—Subpara-
18	graph (A) of section 6662(d)(1) of the Internal Rev-
19	enue Code of 1986 is amended to read as follows:
20	"(A) In general.—For purposes of this
21	section, there is a substantial understatement of
22	income tax for any taxable year if the amount
23	of the understatement for the taxable year ex-
24	ceeds the lesser of—
25	"(i) \$500,000, or

1	"(ii) the greater of 10 percent of the
2	tax required to be shown on the return for
3	the taxable year or \$5,000.".
4	(2) Modification of penalty on tax shel-
5	TERS, ETC.—Clauses (i) and (ii) of section
6	6662(d)(2)(C) of such Code are amended to read as
7	follows:
8	"(i) In General.—Subparagraph (B)
9	shall not apply to any item attributable to
10	a tax shelter.
11	"(ii) Determination of under-
12	STATEMENTS WITH RESPECT TO TAX
13	SHELTERS, ETC.—In any case in which
14	there are one or more items attributable to
15	a tax shelter, the amount of the under-
16	statement under subparagraph (A) shall in
17	no event be less than the amount of under-
18	statement which would be determined for
19	the taxable year if all items shown on the
20	return which are not attributable to any
21	tax shelter were treated as being correct. A
22	similar rule shall apply in cases to which
23	subsection (i) applies, whether or not the
24	items are attributable to a tax shelter.".

1	(c) Treatment of Amended Returns.—Sub-
2	section (a) of section 6664 of the Internal Revenue Code
3	of 1986 is amended by adding at the end the following
4	new sentence: "For purposes of this subsection, an amend-
5	ed return shall be disregarded if such return is filed on
6	or after the date the taxpayer is first contacted by the
7	Secretary regarding the examination of the return.".
8	SEC. 422. PENALTY ON PROMOTERS OF TAX AVOIDANCE
9	STRATEGIES WHICH HAVE NO ECONOMIC
10	SUBSTANCE, ETC.
11	(a) Penalty.—
12	(1) In general.—Section 6700 of the Internal
13	Revenue Code of 1986 (relating to promoting abu-
14	sive tax shelters, etc.) is amended by redesignating
15	subsection (c) as subsection (d) and by inserting
16	after subsection (b) the following new subsection:
17	"(c) Penalty on Substantial Promoters for
18	PROMOTING TAX AVOIDANCE STRATEGIES WHICH HAVE
19	NO ECONOMIC SUBSTANCE, ETC.—
20	"(1) Imposition of Penalty.—Any substan-
21	tial promoter of a tax avoidance strategy shall pay
22	a penalty in the amount determined under para-
23	graph (2) with respect to such strategy if such strat-
24	egy (or any similar strategy promoted by such pro-

1	moter) fails to meet the requirements of any rule of
2	law referred to in section 6662(i)(2).
3	"(2) Amount of Penalty.—The penalty
4	under paragraph (1) with respect to a promoter of
5	a tax avoidance strategy is an amount equal to 100
6	percent of the gross income derived (or to be de-
7	rived) by such promoter from such strategy.
8	"(3) Tax avoidance strategy.—For pur-
9	poses of this subsection, the term 'tax avoidance
10	strategy' means any entity, plan, arrangement, or
11	transaction a significant purpose of the structure of
12	which is the avoidance or evasion of Federal income
13	tax.
14	"(4) Substantial promoter.—For purposes
15	of this subsection—
16	"(A) IN GENERAL.—The term 'substantial
17	promoter' means, with respect to any tax avoid-
18	ance strategy, any promoter if—
19	"(i) such promoter offers such strat-
20	egy to more than 1 potential participant,
21	and
22	"(ii) such promoter may receive fees
23	in excess of \$500,000 in the aggregate
24	with respect to such strategy.

1	"(B) AGGREGATION RULES.—For purposes
2	of this paragraph—
3	"(i) Related Persons.—A promoter
4	and all persons related to such promoter
5	shall be treated as 1 person who is a pro-
6	moter.
7	"(ii) Similar strategies.—All simi-
8	lar tax avoidance strategies of a promoter
9	shall be treated as 1 tax avoidance strat-
10	egy.
11	"(C) Promoter.—The term 'promoter'
12	means any person who participates in the pro-
13	motion, offering, or sale of the tax avoidance
14	strategy.
15	"(D) Related Person.—Persons are re-
16	lated if they bear a relationship to each other
17	which is described in section 267(b) or 707(b).
18	"(4) Coordination with subsection (a).—
19	No penalty shall be imposed by this subsection on
20	any promoter with respect to a tax avoidance strat-
21	egy if a penalty is imposed under subsection (a) on
22	such promoter with respect to such strategy.".
23	(2) Conforming amendment.—Subsection (d)
24	of section 6700 of such Code is amended—

1	(A) by striking "Penalty" and inserting
2	"Penalties", and
3	(B) by striking "penalty" the first place it
4	appears in the text and inserting "penalties".
5	(b) Increase in Penalty on Promoting Abusive
6	Tax Shelters.—The first sentence of section 6700(a)
7	of the Internal Revenue Code of 1986 is amended by strik-
8	ing "a penalty equal to" and all that follows and inserting
9	"a penalty equal to the greater of \$1,000 or 100 percent
10	of the gross income derived (or to be derived) by such per-
11	son from such activity.".
12	SEC. 423. MODIFICATIONS OF PENALTIES FOR AIDING AND
13	ABETTING UNDERSTATEMENT OF TAX LI-
13 14	ABILITY INVOLVING TAX SHELTERS.
14	ABILITY INVOLVING TAX SHELTERS.
14 15 16	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition
14 15 16 17	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition
14 15 16 17	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows:
14 15	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows: "(a) Imposition of Penalties.—
14 15 16 17 18	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows: "(a) Imposition of Penalties.— "(1) In General.—Any person—
14 15 16 17 18 19 20	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows: "(a) Imposition of Penalties.— "(1) In General.—Any person— "(A) who aids or assists in, procures, or
14 15 16 17 18 19 20 21	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows: "(a) Imposition of Penalties.— "(1) In General.—Any person— "(A) who aids or assists in, procures, or advises with respect to, the preparation or pres-
14 15 16 17 18 19 20 21	ABILITY INVOLVING TAX SHELTERS. (a) Imposition of Penalty.—Section 6701(a) of the Internal Revenue Code of 1986 (relating to imposition of penalty) is amended to read as follows: "(a) Imposition of Penalties.— "(1) In General.—Any person— "(A) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit,

1	with any material matter arising under the in-
2	ternal revenue laws, and
3	"(C) who knows that such portion (if so
4	used) would result in an understatement of the
5	liability for tax of another person,
6	shall pay a penalty with respect to each such docu-
7	ment in the amount determined under subsection
8	(b).
9	"(2) Certain tax shelters.—If—
10	"(A) any person—
11	"(i) aids or assists in, procures, or ad-
12	vises with respect to the creation, organiza-
13	tion, sale, implementation, management, or
14	reporting of a tax shelter (as defined in
15	section 6662(d)(2)(C)(iii)) or of any entity,
16	plan, arrangement, or transaction that
17	fails to meet the requirements of any rule
18	of law referred to in section 6662(i)(2),
19	and
20	"(ii) opines, advises, represents, or
21	otherwise indicates (directly or indirectly)
22	that the taxpayer's tax treatment of items
23	attributable to such tax shelter or such en-
24	tity, plan, arrangement, or transaction and
25	giving rise to an understatement of tax li-

1	ability would more likely than not prevail
2	or not give rise to a penalty, and
3	"(B) such opinion, advice, representation,
4	or indication is unreasonable,
5	then such person shall pay a penalty in the amount
6	determined under subsection (b). If a standard high-
7	er than the more likely than not standard was used
8	in any such opinion, advice, representation, or indi-
9	cation, then subparagraph (A)(ii) shall be applied as
10	if such standard were substituted for the more likely
11	than not standard.".
12	(b) Amount of Penalty.—Section 6701(b) of the
13	Internal Revenue Code of 1986 (relating to amount of
14	penalty) is amended—
15	(1) by inserting "or (3)" after "paragraph (2)"
16	in paragraph (1),
17	(2) by striking "subsection (a)" each place it
18	appears and inserting "subsection (a)(1)", and
19	(3) by redesignating paragraph (3) as para-
20	graph (4) and by adding after paragraph (2) the fol-
21	lowing:
22	"(3) Tax shelters.—In the case of—
23	"(A) a penalty imposed by subsection
24	(a)(1) which involves a return, affidavit, claim,
25	or other document relating to a tax shelter or

1	an entity, plan, arrangement, or transaction
2	that fails to meet the requirements of any rule
3	of law referred to in section 6662(i)(2), and
4	"(B) any penalty imposed by subsection
5	(a)(2),
6	the amount of the penalty shall be equal to 100 per-
7	cent of the gross proceeds derived (or to be derived)
8	by the person in connection with the tax shelter or
9	entity, plan, arrangement, or transaction.".
10	(c) Referral and Publication.—If a penalty is
11	imposed under section 6701(a)(2) of the Internal Revenue
12	Code of 1986 (as added by subsection (a)) on any person,
13	the Secretary of the Treasury shall—
14	(1) notify the Director of Practice of the Inter-
15	nal Revenue Service and any appropriate State li-
16	censing authority of the penalty and the cir-
17	cumstances under which it was imposed, and
18	(2) publish the identity of the person and the
19	fact the penalty was imposed on the person.
20	(d) Conforming Amendments.—
21	(1) Section 6701(d) of the Internal Revenue
22	Code of 1986 is amended by striking "Subsection
23	(a)" and inserting "Subsection (a)(1)".

- 1 (2) Section 6701(e) of such Code is amended by 2 striking "subsection (a)(1)" and inserting "sub-3 section (a)(1)(A)".
- 4 (3) Section 6701(f) of such Code is amended by 5 inserting ", tax shelter, or entity, plan, arrangement, 6 or transaction" after "document" each place it ap-7 pears.

8 SEC. 424. FAILURE TO MAINTAIN LISTS.

- 9 Section 6708(a) of the Internal Revenue Code of
- 10 1986 (relating to failure to maintain lists of investors in
- 11 potentially abusive tax shelters) is amended by adding at
- 12 the end the following: "In the case of a tax shelter (as
- 13 defined in section 6662(d)(2)(C)(iii)) or entity, plan, ar-
- 14 rangement, or transaction that fails to meet the require-
- 15 ments of any rule of law referred to in section 6662(i)(2),
- 16 the penalty shall be equal to 50 percent of the gross pro-
- 17 ceeds derived (or to be derived) from each person with re-
- 18 spect to which there was a failure and the limitation of
- 19 the preceding sentence shall not apply.".

20 SEC. 425. PENALTY FOR FAILING TO DISCLOSE REPORT-

- 21 ABLE TRANSACTION.
- 22 (a) In General.—Part I of subchapter B of chapter
- 23 68 of the Internal Revenue Code of 1986 (relating to as-
- 24 sessable penalties) is amended by inserting after section
- 25 6707 the following new section:

1	"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE TAX
2	SHELTER INFORMATION WITH RETURN.
3	"(a) Imposition of Penalty.—Any person who
4	fails to include with its return of Federal income tax any
5	information required to be included under section 6011
6	with respect to a reportable transaction shall pay a penalty
7	in the amount determined under subsection (b). No pen-
8	alty shall be imposed on any such failure if it is shown
9	that such failure is due to reasonable cause.
10	"(b) Amount of Penalty.—
11	"(1) In general.—The amount of the penalty
12	under subsection (a) shall be equal to the greater
13	of—
14	"(A) 5 percent of any increase in Federal
15	tax which results from a difference between the
16	taxpayer's treatment (as shown on its return)
17	of items attributable to the reportable trans-
18	action to which the failure relates and the prop-
19	er tax treatment of such items, or
20	"(B) \$100,000.
21	For purposes of subparagraph (A), the last sentence
22	of section 6664(a) shall apply.
23	"(2) LISTED TRANSACTION.—If the failure
24	under subsection (a) relates to a reportable trans-
25	action which is the same as, or substantially similar
26	to, a transaction specifically identified by the Sec-

- 1 retary as a tax avoidance transaction for purposes of
- 2 section 6011, paragraph (1)(A) shall be applied by
- 3 substituting '10 percent' for '5 percent'.
- 4 "(c) Reportable Transaction.—For purposes of
- 5 this section, the term 'reportable transaction' means any
- 6 transaction with respect to which information is required
- 7 under section 6011 to be included with a taxpayer's return
- 8 of tax because, as determined under regulations prescribed
- 9 under section 6011, such transaction has characteristics
- 10 which may be indicative of a tax avoidance transaction.
- 11 "(d) Coordination With Other Penalties.—
- 12 The penalty imposed by this section is in addition to any
- 13 penalty imposed under section 6662.".
- 14 (b) Conforming Amendment.—The table of sec-
- 15 tions for part I of subchapter B of chapter 68 of the Inter-
- 16 nal Revenue Code of 1986 is amended by inserting after
- 17 the item relating to section 6707 the following:
 - "Sec. 6707A. Penalty for failure to include tax shelter information with return.".
- 18 SEC. 426. REGISTRATION OF CERTAIN TAX SHELTERS
- 19 WITHOUT CORPORATE PARTICIPANTS.
- Section 6111(d)(1)(A) of the Internal Revenue Code
- 21 of 1986 (relating to certain confidential arrangements
- 22 treated as tax shelters) is amended by striking "for a di-
- 23 rect or indirect participant which is a corporation".

1 SEC. 427. EFFECTIVE DATES.

- 2 (a) In General.—Except as provided in subsections
- 3 (b) and (c), the amendments made by this subtitle shall
- 4 apply to transactions after the date of the enactment of
- 5 this Act.
- 6 (b) Section 421.—The amendments made by sub-
- 7 sections (b) and (c) of section 421 shall apply to taxable
- 8 years ending after the date of the enactment of this Act.
- 9 (c) Section 422.—The amendments made by sub-
- 10 section (a) of section 422 shall apply to any tax avoidance
- 11 strategy (as defined in section 6700(c) of the Internal
- 12 Revenue Code of 1986, as amended by this title) which
- 13 is offered to potential participants after the date of the
- 14 enactment of this Act.
- 15 (d) Section 426.—The amendment made by section
- 16 426 shall apply to any tax shelter interest which is offered
- 17 to potential participants after the date of the enactment
- 18 of this Act.
- 19 Subtitle C—Limitation on Importa-
- 20 tion or Transfer of Built-in
- 21 **Losses**
- 22 SEC. 431. LIMITATION ON IMPORTATION OF BUILT-IN
- 23 LOSSES.
- 24 (a) IN GENERAL.—Section 362 of the Internal Rev-
- 25 enue Code of 1986 (relating to basis corporations) is

1	amended by adding at the end the following new sub-
2	section:
3	"(e) Limitation on Importation of Built-in
4	Losses.—
5	"(1) In general.—If in any transaction de-
6	scribed in subsection (a) or (b) there would (but for
7	this subsection) be an importation of a net built-in
8	loss, the basis of each property described in para-
9	graph (2) which is acquired in such transaction shall
10	(notwithstanding subsections (a) and (b)) be its fair
11	market value immediately after such transaction.
12	"(2) Property described.—For purposes of
13	paragraph (1), property is described in this para-
14	graph if—
15	"(A) gain or loss with respect to such
16	property is not subject to tax under this subtitle
17	in the hands of the transferor immediately be-
18	fore the transfer, and
19	"(B) gain or loss with respect to such
20	property is subject to such tax in the hands of
21	the transferee immediately after such transfer.
22	In any case in which the transferor is a partnership,
23	the preceding sentence shall be applied by treating
24	each partner in such partnership as holding such

- partner's proportionate share of the property of such
 partnership.
- 3 "(3) Importation of Net Built-in loss.— 4 For purposes of paragraph (1), there is an importa-5 tion of a net built-in loss in a transaction if the 6 transferee's aggregate adjusted bases of property de-7 scribed in paragraph (2) which is transferred in 8 such transaction would (but for this subsection) ex-9 ceed the fair market value of such property imme-10 diately after such transaction.".
- 11 (b) Comparable Treatment Where Liquida-12 tion.—Paragraph (1) of section 334(b) of the Internal 13 Revenue Code of 1986 (relating to liquidation of sub-14 sidiary) is amended to read as follows:
 - "(1) In General.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

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1	"(A) in any case in which gain or loss is
2	recognized by the liquidating corporation with
3	respect to such property, or
4	"(B) in any case in which the liquidating
5	corporation is a foreign corporation, the cor-
6	porate distributee is a domestic corporation,
7	and the corporate distributee's aggregate ad-
8	justed bases of property described in section
9	362(e)(2) which is distributed in such liquida-
10	tion would (but for this subparagraph) exceed
11	the fair market value of such property imme-
12	diately after such liquidation.".
13	(c) Effective Date.—The amendments made by
14	this section shall apply to transactions after the date of
15	the enactment of this Act.
16	SEC. 432. DISALLOWANCE OF PARTNERSHIP LOSS TRANS-
17	FERS.
18	(a) Treatment of Contributed Property With
19	Built-In Loss.—Paragraph (1) of section 704(c) of the
20	Internal Revenue Code of 1986 is amended by striking
21	"and" at the end of subparagraph (A), by striking the
22	period at the end of subparagraph (B) and inserting ",
23	and", and by adding at the end the following:
24	"(C) if any property so contributed has a
25	built-in loss—

1	"(i) such built-in loss shall be taken
2	into account only in determining the
3	amount of items allocated to the contrib-
4	uting partner, and
5	"(ii) except as provided in regulations,
6	in determining the amount of items allo-
7	cated to other partners, the basis of the
8	contributed property in the hands of the
9	partnership shall be treated as being equal
10	to its fair market value immediately after
11	the contribution.
12	For purposes of subparagraph (C), the term 'built-
13	in loss' means the excess of the adjusted basis of the
14	property over its fair market value immediately after
15	the contribution.".
16	(b) Adjustment to Basis of Partnership Prop-
17	ERTY ON TRANSFER OF PARTNERSHIP INTEREST IF
18	THERE IS SUBSTANTIAL BUILT-IN LOSS.—
19	(1) Adjustment required.—Subsection (a)
20	of section 743 of the Internal Revenue Code of 1986
21	(relating to optional adjustment to basis of partner-
22	ship property) is amended by inserting before the
23	period "or unless the partnership has a substantial
24	built-in loss immediately after such transfer".

1	(2) Adjustment.—Subsection (b) of section
2	743 of such Code is amended by inserting "or with
3	respect to which there is a substantial built-in loss
4	immediately after such transfer" after "section 754
5	is in effect".
6	(3) Substantial Built-in loss.—Section 743
7	of such Code is amended by adding at the end the
8	following new subsection:
9	"(d) Substantial Built-In Loss.—For purposes
10	of this section, a partnership has a substantial built-in loss
11	with respect to a transfer of an interest in a partnership
12	if the transferee partner's proportionate share of the ad-
13	justed basis of the partnership property exceeds 110 per-
14	cent of the basis of such partner's interest in the partner-
15	ship.".
16	(4) CLERICAL AMENDMENTS.—
17	(A) The section heading for section 743 of
18	such Code is amended to read as follows:
19	"SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
20	ERTY WHERE SECTION 754 ELECTION OR
21	SUBSTANTIAL BUILT-IN LOSS.".
22	(B) The table of sections for subpart C of
23	part II of subchapter K of chapter 1 of such
24	Code is amended by striking the item relating

1	to section 743 and inserting the following new
2	item:
	"Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss.".
3	(c) Adjustment to Basis of Undistributed
4	PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL
5	Basis Reduction.—
6	(1) Adjustment required.—Subsection (a)
7	of section 734 of the Internal Revenue Code of 1986
8	(relating to optional adjustment to basis of undis-
9	tributed partnership property) is amended by insert-
10	ing before the period "or unless there is a substan-
11	tial basis reduction".
12	(2) Adjustment.—Subsection (b) of section
13	734 of such Code is amended by inserting "or unless
14	there is a substantial basis reduction" after "section
15	754 is in effect".
16	(3) Substantial basis reduction.—Section
17	734 of such Code is amended by adding at the end
18	the following new subsection:
19	"(d) Substantial Basis Reduction.—For pur-
20	poses of this section, there is a substantial basis reduction
21	with respect to a distribution if the sum of the amounts
22	described in subparagraphs (A) and (B) of subsection
23	(b)(2) exceeds 10 percent of the aggregate adjusted basis

1	of partnership property immediately after the distribu-
2	tion.".
3	(4) CLERICAL AMENDMENTS.—
4	(A) The section heading for section 734 of
5	such Code is amended to read as follows:
6	"SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED
7	PARTNERSHIP PROPERTY WHERE SECTION
8	754 ELECTION OR SUBSTANTIAL BASIS RE-
9	DUCTION.".
10	(B) The table of sections for subpart B of
11	part II of subchapter K of chapter 1 of such
12	Code is amended by striking the item relating
13	to section 734 and inserting the following new
14	item:
	"Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.".
15	(d) Effective Dates.—
16	(1) Subsection (a).—The amendment made
17	by subsection (a) shall apply to contributions made
18	after the date of the enactment of this Act.
19	(2) Subsection (b).—The amendments made
20	by subsection (b) shall apply to transfers after the
21	date of the enactment of this Act.
22	(3) Subsection (e).—The amendments made
23	by subsection (c) shall apply to distributions after
24	the date of the enactment of this Act.

1	TITLE V—EXPATRIATE
2	CORPORATIONS
3	SEC. 501. FOREIGN CORPORATIONS CREATED THROUGH IN-
4	VERSION TRANSACTIONS TAXED AS DOMES-
5	TIC CORPORATIONS.
6	(a) In General.—Paragraph (4) of section 7701(a)
7	of the Internal Revenue Code of 1986 (defining domestic)
8	is amended to read as follows:
9	"(4) Domestic.—
10	"(A) IN GENERAL.—Except as provided in
11	subparagraph (B), the term 'domestic' when ap-
12	plied to a corporation or partnership means cre-
13	ated or organized in the United States or under
14	the law of the United States or of any State
15	unless, in the case of a partnership, the Sec-
16	retary provides otherwise by regulations.
17	"(B) INVERSION TRANSACTIONS DIS-
18	REGARDED.—
19	"(i) In General.—A corporation
20	which would (but for this subparagraph)
21	be treated as a foreign corporation shall be
22	treated as a domestic corporation if such
23	corporation is an inverted domestic cor-
24	poration.

1	"(ii) Inverted domestic corpora-
2	TION.—For purposes of clause (i), a for-
3	eign corporation is an inverted domestic
4	corporation if, immediately after a trans-
5	action in which—
6	"(I) property is directly or indi-
7	rectly transferred by a domestic cor-
8	poration to such foreign corporation,
9	or
10	"(II) stock in a domestic cor-
11	poration is transferred directly or in-
12	directly by its shareholders to such
13	foreign corporation,
14	more than 50 percent of the stock (by vote
15	or value) of such foreign corporation is
16	held by former shareholders of the domes-
17	tic corporation by reason of holding stock
18	in such domestic corporation.
19	"(iii) Regulations relating to in-
20	VERTED DOMESTIC CORPORATIONS.—The
21	Secretary may by regulations provide that
22	clause (i) shall not apply to a foreign cor-
23	poration which is an inverted domestic cor-
24	poration if, immediately before the trans-
25	action described in clause (ii), such foreign

- corporation was engaged in the active conduct of 1 or more trades or businesses
 which are substantial in relation to the
 trades or businesses which the domestic
 corporation described in clause (ii) was engaged in the active conduct of at such
 time.".
- 8 (b) Effective Date.—The amendment made by 9 this section shall apply to taxable years of any inverted 10 domestic corporation beginning after December 31, 2002, 11 without regard to whether the corporation became an in-12 verted domestic corporation before, on, or after such date.

13 TITLE VI—CHILD TAX CREDIT

- 14 SEC. 601. ACCELERATION OF CHILD TAX CREDIT.
- 15 (a) IN GENERAL.—Subsection (a) of section 24 of the
- 16 Internal Revenue Code of 1986 (relating to child tax cred-
- 17 it) is amended by striking "the per child amount" and
- 18 all that follows and inserting "\$1,000".
- 19 (b) Effective Date.—The amendment made by
- 20 this section shall apply to taxable years beginning after
- 21 December 31, 2002.

TITLE VII—MARRIAGE PENALTY 1 RELIEF 2 SEC. 701. ACCELERATION OF MARRIAGE PENALTY RELIEF 4 PROVISIONS. 5 (a) Elimination of Marriage Penalty in Stand-ARD DEDUCTION.— 7 (1) In General.—Paragraph (2) of section 8 63(c) of the Internal Revenue Code of 1986 (relat-9 ing to standard deduction) is amended— (A) by striking "\$5,000" in subparagraph 10 11 (A) and inserting "200 percent of the dollar 12 amount in effect under subparagraph (C) for 13 the taxable year'; (B) by adding "or" at the end of subpara-14 15 graph (B); (C) by striking "in the case of" and all 16 17 that follows in subparagraph (C) and inserting "in any other case."; and 18 19 (D) by striking subparagraph (D). 20 (2) Technical amendments.— 21 (A) Subparagraph (B) of section 1(f)(6) of such Code is amended by striking "(other than 22 23 with" and all that follows through "shall be ap-

plied" and inserting "(other than with respect

1	to sections $63(c)(4)$ and $151(d)(4)(A)$) shall be
2	applied".
3	(B) Paragraph (4) of section 63(c) of such
4	Code is amended by adding at the end the fol-
5	lowing flush sentence:
6	"The preceding sentence shall not apply to the
7	amount referred to in paragraph (2)(A).".
8	(3) Effective date.—The amendments made
9	by this section shall apply to taxable years beginning
10	after December 31, 2002.
11	(b) Elimination of Marriage Penalty in 15-
12	PERCENT BRACKET.—
13	(1) In general.—Section 1(f) of the Internal
14	Revenue Code of 1986 (relating to adjustments in
15	tax tables so that inflation will not result in tax in-
16	creases) is amended by adding at the end the fol-
17	lowing new paragraph:
18	"(8) Elimination of marriage penalty in
19	15-PERCENT BRACKET.—
20	"(A) In general.—With respect to tax-
21	able years beginning after December 31, 2002,
22	in prescribing the tables under paragraph (1)—
23	"(i) the maximum taxable income in
24	the 15-percent rate bracket in the table
25	contained in subsection (a) (and the min-

1	imum taxable income in the next higher
2	taxable income bracket in such table) shall
3	be 200 percent of the maximum taxable in-
4	come in the 15-percent rate bracket in the
5	table contained in subsection (c) (after any
6	other adjustment under this subsection),
7	and
8	"(ii) the comparable taxable income
9	amounts in the table contained in sub-
10	section (d) shall be ½ of the amounts de-
11	termined under clause (i).
12	"(B) ROUNDING.—If any amount deter-
13	mined under subparagraph (A)(i) is not a mul-
14	tiple of \$50, such amount shall be rounded to
15	the next lowest multiple of \$50.".
16	(2) Technical amendments.—
17	(A) Subparagraph (A) of section 1(f)(2) of
18	such Code is amended by inserting "except as
19	provided in paragraph (8)," before "by increas-
20	ing".
21	(B) The heading for subsection (f) of sec-
22	tion 1 is amended by inserting "Elimination
23	OF MARRIAGE PENALTY IN 15-PERCENT
24	BRACKET:" hefore "ADJUSTMENTS"

1	(3) Effective date.—The amendments made
2	by this section shall apply to taxable years beginning
3	after December 31, 2002.
4	(c) Marriage Penalty Relief for Earned In-
5	COME CREDIT.—
6	(1) Increased phaseout amount.—
7	(A) IN GENERAL.—Section 32(b)(2)(B) of
8	the Internal Revenue Code of 1986 (relating to
9	amounts) is amended by striking "increased
10	by—" and all that follows and inserting "in-
11	creased by \$3,000.".
12	(B) Inflation adjustment.—Paragraph
13	(1)(B)(ii) of section 32(j) of such Code (relat-
14	ing to inflation adjustments) is amended to
15	read as follows:
16	"(ii) in the case of the \$3,000 amount
17	in subsection (b)(2)(B), by substituting
18	'calendar year 2003' for 'calendar year
19	1992' in subparagraph (B) of such section
20	1.".
21	(C) EFFECTIVE DATE.—The amendments
22	made by this paragraph shall apply to taxable
23	years beginning after December 31, 2002.
24	(2) Expansion of mathematical error au-
25	THORITY —

1	(A) In General.—Paragraph (2) of sec-
2	tion 6213(g) of such Code is amended by strik-
3	ing "and" at the end of subparagraph (K), by
4	striking the period at the end of subparagraph
5	(L) and inserting ", and", and by inserting
6	after subparagraph (L) the following new sub-
7	paragraph:
8	"(M) the entry on the return claiming the
9	credit under section 32 with respect to a child
10	if, according to the Federal Case Registry of
11	Child Support Orders established under section
12	453(h) of the Social Security Act, the taxpayer
13	is a noncustodial parent of such child.".
14	(B) Effective date.—The amendment
15	made by this paragraph shall take effect on
16	January 1, 2003.
17	(d) Conforming Amendments.—
18	(1) Repeal of Amendments.—Sections 301,
19	302, and 303(g) of the Economic Growth and Tax
20	Relief Reconciliation Act of 2001 are repealed.
21	(2) Repeal of Sunset.—Title IX of the Eco-
22	nomic Growth and Tax Relief Reconciliation Act of
23	2001 (relating to sunset of provisions of such Act)

shall not apply to section 303 (other than subsection

1	(g) of such section) of such Act (relating to mar-
2	riage penalty relief).
3	TITLE VIII—ALTERNATIVE
4	MINIMUM TAX
5	SEC. 801. ALTERNATIVE MINIMUM TAX RELIEF.
6	(a) In General.—Paragraph (2) of section 26(a) of
7	the Internal Revenue Code of 1986 is amended—
8	(1) by striking "2000, 2001, 2002, or 2003"
9	and inserting "2003, 2004, or 2005", and
10	(2) in the heading by striking "2000, 2001,
11	2002, AND 2003" in the heading and inserting
12	" 2003 , 2004 , and 2005 ".
13	(b) Effective Date.—The amendments made by
14	this section shall apply to taxable years beginning after
15	December 31, 2002.

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